



# House of Representatives

General Assembly

**File No. 27**

January Session, 2015

House Bill No. 6762

*House of Representatives, March 5, 2015*

The Committee on Housing reported through REP. BUTLER of the 72nd Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

## **AN ACT CONCERNING THE FORECLOSURE MEDIATION PROGRAM.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 49-31~~l~~ of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) [Prior to July 1, 2016:] (1) Any action for the foreclosure of a  
4 mortgage on residential real property with a return date during the  
5 period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to  
6 the provisions of subsection (b) of this section, and (2) any action for  
7 the foreclosure of a mortgage on (A) residential real property with a  
8 return date [during the period from July 1, 2009, to June 30, 2016,  
9 inclusive] on or after July 1, 2009, or (B) real property owned by a  
10 religious organization with a return date [during the period from  
11 October 1, 2011, to June 30, 2016, inclusive] on or after October 1, 2011,  
12 shall be subject to the provisions of subsection (c) of this section.

13 (b) (1) [Prior to July 1, 2016, when] When a mortgagee commences

14 an action for the foreclosure of a mortgage on residential real property  
15 with a return date during the period from July 1, 2008, to June 30, 2009,  
16 inclusive, the mortgagee shall give notice to the mortgagor of the  
17 foreclosure mediation program established in section 49-31m by  
18 attaching to the front of the foreclosure complaint that is served on the  
19 mortgagor: (A) A copy of the notice of the availability of foreclosure  
20 mediation, in such form as the Chief Court Administrator prescribes,  
21 and (B) a foreclosure mediation request form, in such form as the Chief  
22 Court Administrator prescribes.

23 (2) Except as provided in subdivision (3) of this subsection, a  
24 mortgagor may request foreclosure mediation by submitting the  
25 foreclosure mediation request form to the court and filing an  
26 appearance not more than fifteen days after the return date for the  
27 foreclosure action. Upon receipt of the foreclosure mediation request  
28 form, the court shall notify each appearing party that a foreclosure  
29 mediation request form has been submitted by the mortgagor.

30 (3) The court may grant a mortgagor permission to submit a  
31 foreclosure mediation request form and file an appearance after the  
32 fifteen-day period established in subdivision (2) of this subsection, for  
33 good cause shown.

34 [(4) No foreclosure mediation request form may be submitted to the  
35 court under this subsection on or after July 1, 2016.]

36 [(5)] (4) If at any time on or after July 1, 2008, [but prior to July 1,  
37 2016,] the court determines that the notice requirement of subdivision  
38 (1) of this subsection has not been met, the court may, upon its own  
39 motion or upon the written motion of the mortgagor, issue an order  
40 that no judgment may enter for fifteen days during which period the  
41 mortgagor may submit a foreclosure mediation request form to the  
42 court.

43 [(6)] (5) Notwithstanding any provision of the general statutes or  
44 any rule of law to the contrary, [prior to July 1, 2016,] no judgment of  
45 strict foreclosure nor any judgment ordering a foreclosure sale shall be

46 entered in any action subject to the provisions of this subsection and  
47 instituted by the mortgagee to foreclose a mortgage on residential real  
48 property unless: (A) Notice to the mortgagor has been given by the  
49 mortgagee in accordance with subdivision (1) of this subsection and  
50 the time for submitting a foreclosure mediation request form has  
51 expired and no foreclosure mediation request form has been  
52 submitted, or if such notice has not been given, the time for submitting  
53 a foreclosure mediation request form pursuant to subdivision (2) or (3)  
54 of this subsection has expired and no foreclosure mediation request  
55 form has been submitted, or (B) the mediation period set forth in  
56 subsection (b) of section 49-31n, as amended by this act, has expired or  
57 has otherwise terminated, whichever is earlier.

58 [(7)] (6) None of the mortgagor's or mortgagee's rights in the  
59 foreclosure action shall be waived by the mortgagor's submission of a  
60 foreclosure mediation request form to the court.

61 (c) (1) [Prior to July 1, 2016, when] When a mortgagee commences  
62 an action for the foreclosure of a mortgage on residential real property  
63 with a return date on or after July 1, 2009, or, with respect to real  
64 property owned by a religious organization, a return date on or after  
65 October 1, 2011, the mortgagee shall give notice to the mortgagor of  
66 the foreclosure mediation program established in section 49-31m by  
67 attaching to the front of the writ, summons and complaint that is  
68 served on the mortgagor: (A) A copy of the notice of foreclosure  
69 mediation, in such form as the Chief Court Administrator prescribes,  
70 (B) a copy of the foreclosure mediation certificate form described in  
71 subdivision (3) of this subsection, in such form as the Chief Court  
72 Administrator prescribes, (C) a blank appearance form, in such form as  
73 the Chief Court Administrator prescribes, (D) with respect to an action  
74 for the foreclosure of a mortgage on residential real property with a  
75 return date on or after October 1, 2011, to September 30, 2013,  
76 inclusive, a mediation information form and a notice containing  
77 contact information for authority-approved consumer credit  
78 counseling agencies, which form and notice shall be in such form as  
79 the Chief Court Administrator prescribes, and which form shall be

80 designed to elicit current financial information and such other  
81 nonfinancial information from the mortgagor as the Chief Court  
82 Administrator, in consultation with representatives from the banking  
83 industry and consumer advocates, determines will further the  
84 objectives of the mediation program. The Chief Court Administrator  
85 shall develop a premediation review protocol pursuant to which the  
86 mediator shall request that any documents submitted to the mediator  
87 for initial review that are incomplete, contain errors or are likely to be  
88 found unacceptable by the mortgagee be completed or corrected and  
89 that the completed or corrected documents be resubmitted to the  
90 mediator for review. Such premediation review, including any  
91 recommendations to complete or correct documents, shall not be  
92 construed to be the practice of law on behalf of any party to the  
93 mediation or the provision of legal advice by the mediator. The  
94 instructions to the mediation information form shall explain that the  
95 completed mediation information form, along with accompanying  
96 documentation reasonably requested from the mortgagor by way of  
97 such instructions, shall be delivered to the mortgagee's counsel not  
98 later than fifteen business days prior to the date of the initial mediation  
99 session, as identified in the notice provided pursuant to subdivision (2)  
100 of subsection (c) of section 49-31n, as amended by this act, and (E) for  
101 an action to foreclose a mortgage on residential real property with a  
102 return date on or after October 1, 2013, the mediation information form  
103 shall instruct the mortgagor as to the objectives of the mediation  
104 program, explain the preliminary process of meeting with the  
105 mediator as described in subdivision (4) of this subsection, instruct the  
106 mortgagor to begin gathering financial documentation commonly used  
107 in foreclosure mediation for use in meeting with the mediator and in  
108 mediation, and include a notice containing contact information for  
109 authority-approved consumer counseling agencies, which shall be in  
110 such form as the Chief Court Administrator prescribes. The content of  
111 the mediation information form shall be designed by the Chief Court  
112 Administrator in consultation with representatives from the banking  
113 industry and consumer advocates.

114 (2) The court shall issue a notice of foreclosure mediation described

115 in subdivision (3) of this subsection to the mortgagor not later than the  
116 date three business days after the date the mortgagee returns the writ  
117 to the court.

118 (3) The notice of foreclosure mediation shall instruct the mortgagor  
119 to file the appearance and foreclosure mediation certificate forms with  
120 the court not later than the date fifteen days from the return date for  
121 the foreclosure action. With respect to actions with a return date on or  
122 after October 1, 2011, to September 30, 2013, inclusive, such notice shall  
123 remind the mortgagor to deliver the completed mediation information  
124 form and the accompanying documentation described in subdivision  
125 (1) of this subsection and encourage such delivery in advance of the  
126 required date. With respect to actions with a return date on or after  
127 October 1, 2013, [to June 30, 2016, inclusive,] such notice shall instruct  
128 the mortgagor to begin gathering financial information commonly  
129 used in foreclosure mediation for use in meeting with the mediator  
130 and in mediation. The mediation information form and accompanying  
131 documentation shall not, without the explicit written instruction of the  
132 mortgagor, be publicly available. Such notice of foreclosure mediation  
133 shall be accompanied by materials from the Department of Banking, as  
134 prescribed by the Chief Court Administrator, which shall describe the  
135 community-based resources available to the mortgagor, including  
136 authority-approved housing counseling agencies that may assist with  
137 preparation for mediation and application for mortgage assistance  
138 programs. The foreclosure mediation certificate form shall require the  
139 mortgagor to provide sufficient information to permit the court to  
140 confirm that the defendant in the foreclosure action is a mortgagor,  
141 and to certify that said mortgagor has sent a copy of the mediation  
142 certificate form to the plaintiff in the action.

143 (4) Upon receipt of the mortgagor's appearance and foreclosure  
144 mediation certificate forms, and provided the court confirms the  
145 defendant in the foreclosure action is a mortgagor and that said  
146 mortgagor has sent a copy of the mediation certificate form to the  
147 plaintiff, the court shall assign the case to mediation and issue notice of  
148 such assignment to all appearing parties, which notice shall include an

149 electronic mail address for all communications related to the  
150 mediation. The court shall issue such notice not earlier than the date  
151 five business days after the return date or by the date three business  
152 days after the date on which the court receives the mortgagor's  
153 appearance and foreclosure mediation certificate forms, whichever is  
154 later, except that if the court does not receive the appearance and  
155 foreclosure mediation certificate forms from the mortgagor by the date  
156 fifteen days after the return date for the foreclosure action, the court  
157 shall not assign the case to mediation. Promptly upon receipt of the  
158 notice of assignment, but not later than the thirty-fifth day following  
159 the return date, the mortgagee or its counsel shall deliver to the  
160 mediator, via the electronic mail address provided for communications  
161 related to the mediation, and to the mortgagor, via first class, priority  
162 or overnight mail, (A) an account history identifying all credits and  
163 debits assessed to the loan account and any related escrow account in  
164 the immediately preceding twelve-month period and an itemized  
165 statement of the amount required to reinstate the mortgage loan with  
166 accompanying information, written in plain language, to explain any  
167 codes used in the history and statement which are not otherwise self-  
168 explanatory, (B) the name, business mailing address, electronic mail  
169 address, facsimile number and direct telephone number of an  
170 individual able to respond with reasonable adequacy and promptness  
171 to questions relative to the information submitted to the mediator  
172 pursuant to this subdivision, and any subsequent updates to such  
173 contact information, which shall be provided reasonably promptly to  
174 the mediator via the electronic mail address provided for  
175 communication related to the mediation, (C) all reasonably necessary  
176 forms and a list of all documentation reasonably necessary for the  
177 mortgagee to evaluate the mortgagor for common alternatives to  
178 foreclosure that are available through the mortgagee, if any, (D) a copy  
179 of the note and mortgage, (E) summary information regarding the  
180 status of any pending foreclosure avoidance efforts being undertaken  
181 by the mortgagee, (F) a copy of any loss mitigation affidavit filed with  
182 the court, and (G) at the mortgagee's option, (i) the history of  
183 foreclosure avoidance efforts with respect to the mortgagor, (ii)

184 information regarding the condition of mortgaged property, and (iii)  
185 such other information as the mortgagee may determine is relevant to  
186 meeting the objectives of the mediation program. Following the  
187 mediator's receipt of such information, the court shall assign a  
188 mediator to the mediation and schedule a meeting with the mediator  
189 and the mortgagor and shall endeavor to schedule such meeting on or  
190 prior to the forty-ninth day following the return date. The notice of  
191 such meeting shall instruct the mortgagor to complete the forms prior  
192 to the meeting and to furnish such forms together with the  
193 documentation contained in the list, as provided by the mortgagee  
194 following the filing of the foreclosure mediation certificate, at the  
195 meeting. At such meeting, the mediator shall review such forms and  
196 documentation with the mortgagor, along with the information  
197 supplied by the mortgagee, in order to discuss the options that may be  
198 available to the mortgagor, including any community-based resources,  
199 and assist the mortgagor in completing the forms and furnishing the  
200 documentation necessary for the mortgagee to evaluate the mortgagor  
201 for alternatives to foreclosure. The mediator may elect to schedule  
202 subsequent meetings with the mortgagor and determine whether any  
203 mortgagor may be excused from an in-person appearance at such  
204 subsequent meeting. As soon as practicable, but in no case later than  
205 the eighty-fourth day following the return date, the mediator shall  
206 facilitate and confirm the submission by the mortgagor of the forms  
207 and documentation to the mortgagee's counsel via electronic means  
208 and, at the mortgagee's election, directly to the mortgagee per the  
209 mortgagee's instruction, and determine, based on the mortgagor's  
210 attendance at the meetings and the extent the mortgagor completed the  
211 forms and furnished the documentation contemplated in this  
212 subdivision, or failed to perform such tasks through no material fault  
213 of the mortgagee, and file a report with the court indicating, (I)  
214 whether mediation shall be scheduled with the mortgagee, (II) whether  
215 the mortgagor attended scheduled meetings with the mediator, (III)  
216 whether the mortgagor fully or substantially completed the forms and  
217 furnished the documentation requested by the mortgagee, (IV) the  
218 date on which the mortgagee supplied the forms and documentation,

219 and (V) any other information the mediator determines to be relevant  
220 to the objectives of the mediation program. No meeting or  
221 communication between the mediator and mortgagor under this  
222 subdivision shall be treated as an impermissible ex parte  
223 communication. If the mediator determines that the mortgagee shall  
224 participate in mediation, the court shall promptly issue notice to all  
225 parties of such determination and schedule a mediation session  
226 between the mortgagee and mortgagor in accordance with subsection  
227 (c) of section 49-31n, as amended by this act, to be held not later than  
228 five weeks following the submission to the mortgagee of the forms and  
229 documentation contemplated in this subdivision. If the mediator  
230 determines that no sessions between the mortgagee and mortgagor  
231 shall be scheduled, the court shall promptly issue notice to all parties  
232 regarding such determination and mediation shall be terminated. Any  
233 mortgagor wishing to contest such determination shall petition the  
234 court and show good cause for reinclusion in the mediation program,  
235 including, but not limited to, a material change in financial  
236 circumstances or a mistake or misunderstanding of the facts by the  
237 mediator.

238 (5) Notwithstanding the provisions of this subsection, the court may  
239 refer a foreclosure action brought by a mortgagee to the foreclosure  
240 mediation program at any time, for good cause shown, provided the  
241 mortgagor has filed an appearance in said action and further provided  
242 the court shall, not later than the date three business days after the date  
243 on which it makes such referral, send a notice to each appearing party  
244 assigning the case to mediation and requiring the parties to participate  
245 in the premediation process described in subdivision (4) of this  
246 subsection, with the court establishing deadlines to ensure that the  
247 premediation process is to be completed by the parties as  
248 expeditiously as the circumstances warrant and permit. When  
249 determining whether good cause exists, the court shall consider  
250 whether the parties are likely to benefit from mediation and, in the  
251 case of a referral after prior attempts at mediation have been  
252 terminated, whether there has been a material change in  
253 circumstances.



254 (6) Notwithstanding any provision of the general statutes or any  
255 rule of law, [prior to July 1, 2016,] (A) for the period of time which  
256 shall not exceed eight months from the return date, the mortgagor  
257 shall be permitted to file an answer, special defenses or counterclaims,  
258 but no mortgagee or mortgagor shall make any motion, request or  
259 demand with respect to the other, except those motions, requests or  
260 demands that relate to the mediation program described in section 49-  
261 31m and the mediation sessions held pursuant to such program,  
262 provided (i) a mortgagor seeking to contest the court's jurisdiction may  
263 file a motion to dismiss and the mortgagee may object to such motion  
264 to dismiss in accordance with applicable law and the rules of the  
265 courts, and (ii) if the mortgagor elects to make any other motion,  
266 request or demand with respect to the mortgagee, the eight-month  
267 limit shall no longer apply to either party; and (B) no judgment of strict  
268 foreclosure nor any judgment ordering a foreclosure sale shall be  
269 entered in any action subject to the provisions of this subsection and  
270 instituted by the mortgagee to foreclose a mortgage on residential real  
271 property or real property owned by a religious organization unless: (i)  
272 The mediation period set forth in subsection (c) of section 49-31n, as  
273 amended by this act, has expired or has otherwise terminated,  
274 whichever is earlier, and, if fewer than eight months has elapsed from  
275 the return date at the time of termination, fifteen days have elapsed  
276 since such termination and any pending motion or request to extend  
277 the mediation period has been heard and denied by the court, or (ii)  
278 the mediation program is not otherwise required or available. Nothing  
279 in this subdivision shall affect any motion made or any default or  
280 judgment entered on or before June 30, 2011.

281 (7) With respect to foreclosure actions with a return date on or after  
282 July 1, 2011, [to June 30, 2016, inclusive,] notwithstanding any  
283 provision of the general statutes or any rule of law to the contrary, the  
284 mortgagee shall be permitted following the eight-month or fifteen-day  
285 period described in subdivision (6) of this subsection, to  
286 simultaneously file, as applicable, (A) a motion for default, and (B) a  
287 motion for judgment of strict foreclosure or a motion for judgment of  
288 foreclosure by sale with respect to the mortgagor in the foreclosure

289 action.

290 (8) None of the mortgagor's or mortgagee's rights in the foreclosure  
291 action shall be waived by participation in the foreclosure mediation  
292 program.

293 Sec. 2. Section 49-31n of the general statutes is repealed and the  
294 following is substituted in lieu thereof (*Effective from passage*):

295 (a) [Prior to July 1, 2016:] (1) Any action for the foreclosure of a  
296 mortgage on residential real property with a return date during the  
297 period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to  
298 the provisions of subsection (b) of this section, and (2) any action for  
299 the foreclosure of a mortgage on (A) residential real property with a  
300 return date [during the period from July 1, 2009, to June 30, 2016,  
301 inclusive] on or after July 1, 2009, or (B) real property owned by a  
302 religious organization with a return date [during the period from  
303 October 1, 2011, to June 30, 2016, inclusive] on or after October 1, 2011,  
304 shall be subject to the provisions of subsection (c) of this section.

305 (b) (1) For any action for the foreclosure of a mortgage on residential  
306 real property with a return date during the period from July 1, 2008, to  
307 June 30, 2009, inclusive, the mediation period under the foreclosure  
308 mediation program established in section 49-31m shall commence  
309 when the court sends notice to each appearing party that a foreclosure  
310 mediation request form has been submitted by a mortgagor to the  
311 court, which notice shall be sent not later than three business days after  
312 the court receives a completed foreclosure mediation request form. The  
313 mediation period shall conclude not later than the conclusion of the  
314 third mediation session between the mortgagor and mortgagee or  
315 seven months after the return date, whichever is earlier, except that the  
316 court may, in its discretion, for good cause shown, upon the motion of  
317 any party or the mediator, extend the mediation period subject to the  
318 provisions of subdivision [(9)] (8) of this subsection or shorten the  
319 mediation period.

320 (2) The first mediation session shall be held not later than fifteen

321 business days after the court sends notice to all parties that a  
322 foreclosure mediation request form has been submitted to the court.  
323 The mortgagor and mortgagee shall appear in person at each  
324 mediation session and shall have the ability to mediate, except that (A)  
325 if a party is represented by counsel, the party's counsel may appear in  
326 lieu of the party to represent the party's interests at the mediation,  
327 provided the party has the ability to mediate, the mortgagor attends  
328 the first mediation session in person, and the party is available (i)  
329 during the mediation session by telephone, and (ii) to participate in the  
330 mediation session by speakerphone, provided an opportunity is  
331 afforded for confidential discussions between the party and party's  
332 counsel, (B) following the initial mediation session, if there are two or  
333 more mortgagors who are self-represented, only one mortgagor shall  
334 be required to appear in person at each subsequent mediation session  
335 unless good cause is shown, provided the other mortgagors are  
336 available (i) during the mediation session, and (ii) to participate in the  
337 mediation session by speakerphone, and (C) if a party suffers from a  
338 disability or other significant hardship that imposes an undue burden  
339 on such party to appear in person, the mediator may grant permission  
340 to such party to participate in the mediation session by telephone. A  
341 mortgagor's spouse, who is not a mortgagor but who lives in the  
342 subject property, may appear at each mediation session, provided all  
343 appearing mortgagors consent, in writing, to such spouse's appearance  
344 or such spouse shows good cause for his or her appearance and the  
345 mortgagors consent in writing to the disclosure of nonpublic personal  
346 information to such spouse. If the mortgagor has submitted a complete  
347 package of financial documentation in connection with a request for a  
348 particular foreclosure alternative, the mortgagee shall have thirty-five  
349 days from the receipt of the completed package to respond with a  
350 decision and, if the decision is a denial of the request, provide the  
351 reasons for such denial. If the mortgagor has, in connection with a  
352 request for a foreclosure alternative, submitted a financial package that  
353 is not complete, or if the mortgagee's evaluation of a complete package  
354 reveals that additional information is necessary to underwrite the  
355 request, the mortgagee shall request the missing or additional

356 information within a reasonable period of time of such evaluation. If  
357 the mortgagee's evaluation of a complete package reveals that  
358 additional information is necessary to underwrite the request, the  
359 thirty-five-day deadline for a response shall be extended but only for  
360 so long as is reasonable given the timing of the mortgagor's submission  
361 of such additional information and the nature and context of the  
362 required underwriting. Not later than the third business day after each  
363 mediation session held on or after June 18, 2013, the mediator shall file  
364 with the court a report indicating, to the extent applicable, (i) the  
365 extent to which each of the parties complied with the requirements set  
366 forth in this subdivision, including the requirement to engage in  
367 conduct that is consistent with the objectives of the mediation program  
368 and to possess the ability to mediate, (ii) whether the mortgagor  
369 submitted a complete package of financial documentation to the  
370 mortgagee, (iii) a general description of the foreclosure alternative  
371 being requested by the mortgagor, (iv) whether the mortgagor has  
372 previously been evaluated for similar requests, whether prior to  
373 mediation or in mediation, and, if so, whether there has been any  
374 apparent change in circumstances since a decision was made with  
375 respect to that prior evaluation, (v) whether the mortgagee has  
376 responded to the mortgagor's request for a foreclosure alternative and,  
377 if so, a description of the response and whether the mediator is aware  
378 of any material reason not to agree with the response, (vi) whether the  
379 mortgagor has responded to an offer made by the mortgagee on a  
380 reasonably timely basis, and if so, an explanation of the response, (vii)  
381 whether the mortgagee has requested additional information from the  
382 mortgagor and, if so, the stated reasons for the request and the date by  
383 which such additional information shall be submitted so that  
384 information previously submitted by the mortgagor, to the extent  
385 possible, may still be used by the mortgagee in conducting its review,  
386 (viii) whether the mortgagor has supplied, on a reasonably timely  
387 basis, any additional information that was reasonably requested by the  
388 mortgagee, and, if not, the stated reason for not doing so, (ix) if  
389 information provided by the mortgagor is no longer current for  
390 purposes of evaluating a foreclosure alternative, a description of the

391 out-of-date information and an explanation as to how and why such  
392 information is no longer current, (x) whether the mortgagee has  
393 provided a reasonable explanation of the basis for a decision to deny a  
394 request for a loss mitigation option or foreclosure alternative and  
395 whether the mediator is aware of any material reason not to agree with  
396 that decision, (xi) whether the mortgagee has complied with the time  
397 frames set forth in this subdivision for responding to requests for  
398 decisions, (xii) if a subsequent mediation session is expected to occur, a  
399 general description of the expectations for such subsequent session  
400 and for the parties prior to such subsequent session and, if not  
401 otherwise addressed in the report, whether the parties satisfied the  
402 expectations set forth in previous reports, and (xiii) a determination of  
403 whether the parties will benefit from further mediation. The mediator  
404 shall deliver a copy of such report to each party to the mediation when  
405 the mediator files the report. The parties shall have the opportunity to  
406 submit their own supplemental information following the filing of the  
407 report, provided such supplemental information shall be submitted  
408 not later than five business days following the receipt of the mediator's  
409 report. Any request by the mortgagee to the mortgagor for additional  
410 or updated financial documentation shall be made in writing. The  
411 court may impose sanctions on any party or on counsel to a party if  
412 such party or such counsel engages in intentional or a pattern or  
413 practice of conduct during the mediation process that is contrary to the  
414 objectives of the mediation program. Any sanction that is imposed  
415 shall be proportional to the conduct and consistent with the objectives  
416 of the mediation program. Available sanctions shall include, but not be  
417 limited to, terminating mediation, ordering the mortgagor or  
418 mortgagee to mediate in person, forbidding the mortgagee from  
419 charging the mortgagor for the mortgagee's attorney's fees, awarding  
420 attorney's fees, and imposing fines. In the case of egregious  
421 misconduct, the sanctions shall be heightened. The court shall not  
422 award attorney's fees to any mortgagee for time spent in any  
423 mediation session if the court finds that such mortgagee has failed to  
424 comply with this subdivision, unless the court finds reasonable cause  
425 for such failure.

426 (3) If the mediator reports to the court that the parties will not  
427 benefit from further mediation, the mediation period shall terminate  
428 automatically. If the mediator reports to the court after the first or  
429 second mediation session that the parties may benefit from further  
430 mediation, the mediation period shall continue.

431 (4) If the mediation period concludes and certain issues have not  
432 been resolved pursuant to the mediation, the mediator may refer the  
433 mortgagor to any appropriate community-based services that are  
434 available.

435 (5) The Chief Court Administrator shall establish policies and  
436 procedures to implement this subsection. Such policies and procedures  
437 shall, at a minimum, provide that the mediator shall advise the  
438 mortgagor at the first meeting required by subdivision (4) of  
439 subsection (c) of section 49-31l, as amended by this act, that a judgment  
440 of strict foreclosure or foreclosure by sale may cause the mortgagor to  
441 lose the residential real property to foreclosure.

442 (6) In no event shall any determination issued by a mediator under  
443 this program form the basis of an appeal of any foreclosure judgment.

444 [(7) Foreclosure mediation request forms shall not be accepted by  
445 the court under this subsection on or after July 1, 2016, and the  
446 foreclosure mediation program shall terminate when all mediation has  
447 concluded with respect to any applications submitted to the court prior  
448 to July 1, 2016.]

449 [(8)] (7) At any time during the mediation period, the mediator may  
450 refer a mortgagor who is the owner-occupant of one-to-four family  
451 residential real property to the mortgage assistance programs, except  
452 that any such referral shall not prevent a mortgagee from proceeding  
453 to judgment when the conditions specified in subdivision [(6)] (5) of  
454 subsection (b) of section 49-31l, as amended by this act, have been  
455 satisfied.

456 [(9)] (8) (A) The mediation period shall conclude following the third

457 mediation session or if more than seven months have elapsed since the  
458 return date. Not later than fifteen days following the conclusion of the  
459 mediation period, and any extended mediation sessions held in  
460 accordance with this subdivision, any party may move for, or the  
461 mediator may request, an extension of the mediation period. The court  
462 shall grant only one additional mediation session per motion or  
463 request upon a finding that it is highly probable the parties will reach  
464 an agreement through mediation. The court may also grant one  
465 additional mediation session per motion or request upon a finding that  
466 any party has engaged, either intentionally or by a pattern or practice,  
467 in conduct that is contrary to the objectives of the mediation program.  
468 The court shall make its ruling not later than twenty days after the  
469 filing of such motion or request, and no judgment of strict foreclosure  
470 or any judgment ordering a foreclosure sale shall be entered until (i)  
471 the court denies the motion or request, or (ii) the conclusion of the  
472 extended mediation session, except as provided in subparagraph (B) of  
473 this subdivision. Upon the grant of an additional mediation session  
474 following the proper finding, the court shall establish an expeditious  
475 deadline for such extended mediation session to occur. Such extended  
476 mediation period shall conclude following such extended mediation  
477 session.

478 (B) The mediation period may be extended for one additional  
479 mediation session without a hearing held pursuant to this subdivision  
480 provided all parties to the mediation agree that such parties would  
481 benefit from such a session and, in consultation with the mediator,  
482 establish an expeditious deadline for such session to take place.

483 (C) To determine whether to extend mediation, the court may  
484 consider all matters that have arisen in the mediation, including, but  
485 not limited to, the number of motions to extend mediation, the reasons  
486 for which an agreement has not been reached, the objectives of the  
487 mediation program, the extent to which the parties will benefit from  
488 further mediation, the reports submitted by the mediator, papers  
489 submitted in connection with any motion, and any supplemental  
490 reports submitted by a party. The court shall articulate its reasons in

491 the order granting or denying any such motion or request to extend  
492 mediation.

493 [(10)] (9) For any case pending as of October 1, 2013, in which  
494 mediation is ongoing, (A) if three or fewer sessions have been held,  
495 such case shall be treated as if no sessions have been held as of said  
496 date for purposes of subdivision [(9)] (8) of this subsection, and (B) if  
497 four or more sessions have been held, then any party or the mediator  
498 may move to terminate the mediation period or extend such period in  
499 accordance with subdivision [(9)] (8) of this subsection and, if no such  
500 motion to extend is made, the mediation period shall conclude after  
501 the third mediation session occurring after October 1, 2013.

502 (c) (1) For any action for the foreclosure of a mortgage on residential  
503 real property with a return date [during the period from July 1, 2009,  
504 to June 30, 2016, inclusive] on or after July 1, 2009, or for any action for  
505 the foreclosure of a mortgage on real property owned by a religious  
506 organization with a return date [during the period from October 1,  
507 2011, to June 30, 2016] on or after October 1, 2011, inclusive, the  
508 mediation period under the foreclosure mediation program  
509 established in section 49-31m shall commence when the court sends  
510 notice to each appearing party scheduling the first foreclosure  
511 mediation session. The mediation period shall conclude not later than  
512 the conclusion of the third mediation session between the mortgagor  
513 and mortgagee or seven months after the return date, whichever is  
514 earlier, except that the court may, in its discretion, for good cause  
515 shown, upon the motion of any party or request by the mediator,  
516 extend the mediation period subject to the provisions of subdivision  
517 [(9)] (8) of this subsection or shorten the mediation period.

518 (2) The mortgagor and mortgagee shall appear in person at each  
519 mediation session and shall have the ability to mediate, except that (A)  
520 if a party is represented by counsel, the party's counsel may appear in  
521 lieu of the party to represent the party's interests at the mediation,  
522 provided the party has the ability to mediate, the mortgagor attends  
523 the first mediation session in person and the party is available (i)



524 during the mediation session by telephone, and (ii) to participate in the  
525 mediation session by speakerphone, provided an opportunity is  
526 afforded for confidential discussions between the party and party's  
527 counsel, (B) following the initial mediation session, if there are two or  
528 more mortgagors who are self-represented, only one mortgagor shall  
529 be required to appear in person at each subsequent mediation session  
530 unless good cause is shown, provided the other mortgagors are  
531 available (i) during the mediation session, and (ii) to participate in the  
532 mediation session by speakerphone, and (C) if a party suffers from a  
533 disability or other significant hardship that imposes an undue burden  
534 on such party to appear in person, the mediator may grant permission  
535 to such party to participate in the mediation session by telephone. A  
536 mortgagor's spouse, who is not a mortgagor but who lives in the  
537 subject property, may appear at each mediation session, provided all  
538 appearing mortgagors consent, in writing, to such spouse's appearance  
539 or such spouse shows good cause for his or her appearance and the  
540 mortgagors consent, in writing, to the disclosure of nonpublic personal  
541 information to such spouse. If the mortgagor has submitted a complete  
542 package of financial documentation in connection with a request for a  
543 particular foreclosure alternative, the mortgagee shall have thirty-five  
544 days from the receipt of the completed package to respond with a  
545 decision and, if the decision is a denial of the request, provide the  
546 reasons for such denial. If the mortgagor has, in connection with a  
547 request for a foreclosure alternative, submitted a financial package that  
548 is not complete, or if the mortgagee's evaluation of a complete package  
549 reveals that additional information is necessary to underwrite the  
550 request, the mortgagee shall request the missing or additional  
551 information within a reasonable period of time of such evaluation. If  
552 the mortgagee's evaluation of a complete package reveals that  
553 additional information is necessary to underwrite the request, the  
554 thirty-five-day deadline for a response shall be extended but only for  
555 so long as is reasonable given the timing of the mortgagor's submission  
556 of such additional information and the nature and context of the  
557 required underwriting. Not later than the third business day after each  
558 mediation session, the mediator shall file with the court a report

559 indicating, to the extent applicable, (i) the extent to which each of the  
560 parties complied with the requirements set forth in this subdivision,  
561 including the requirement to engage in conduct that is consistent with  
562 the objectives of the mediation program and to possess the ability to  
563 mediate, (ii) whether the mortgagor submitted a complete package of  
564 financial documentation to the mortgagee, (iii) a general description of  
565 the foreclosure alternative being requested by the mortgagor, (iv)  
566 whether the mortgagor has previously been evaluated for similar  
567 requests, whether prior to mediation or in mediation, and, if so,  
568 whether there has been any apparent change in circumstances since a  
569 decision was made with respect to that prior evaluation, (v) whether  
570 the mortgagee has responded to the mortgagor's request for a  
571 foreclosure alternative and, if so, a description of the response and  
572 whether the mediator is aware of any material reason not to agree with  
573 the response, (vi) whether the mortgagor has responded to an offer  
574 made by the mortgagee on a reasonably timely basis, and if so, an  
575 explanation of the response, (vii) whether the mortgagee has requested  
576 additional information from the mortgagor and, if so, the stated  
577 reasons for the request and the date by which such additional  
578 information shall be submitted so that information previously  
579 submitted by the mortgagor, to the extent possible, may still be used  
580 by the mortgagee in conducting its review, (viii) whether the  
581 mortgagor has supplied, on a reasonably timely basis, any additional  
582 information that was reasonably requested by the mortgagee, and, if  
583 not, the stated reason for not doing so, (ix) if information provided by  
584 the mortgagor is no longer current for purposes of evaluating a  
585 foreclosure alternative, a description of the out-of-date information  
586 and an explanation as to how and why such information is no longer  
587 current, (x) whether the mortgagee has provided a reasonable  
588 explanation of the basis for a decision to deny a request for a loss  
589 mitigation option or foreclosure alternative and whether the mediator  
590 is aware of any material reason not to agree with that decision, (xi)  
591 whether the mortgagee has complied with the time frames set forth in  
592 this subdivision for responding to requests for decisions, (xii) if a  
593 subsequent mediation session is expected to occur, a general

594 description of the expectations for such subsequent session and for the  
595 parties prior to such subsequent session and, if not otherwise  
596 addressed in the report, whether the parties satisfied the expectations  
597 set forth in previous reports, and (xiii) a determination of whether the  
598 parties will benefit from further mediation. The mediator shall deliver  
599 a copy of such report to each party to the mediation when the mediator  
600 files the report. The parties shall have the opportunity to submit their  
601 own supplemental information following the filing of the report,  
602 provided such supplemental information shall be submitted not later  
603 than five business days following the receipt of the mediator's report.  
604 Any request by the mortgagee to the mortgagor for additional or  
605 updated financial documentation shall be made in writing. The court  
606 may impose sanctions on any party or on counsel to a party if such  
607 party or such counsel engages in intentional or a pattern or practice of  
608 conduct during the mediation process that is contrary to the objectives  
609 of the mediation program. Any sanction that is imposed shall be  
610 proportional to the conduct and consistent with the objectives of the  
611 mediation program. Available sanctions shall include, but not be  
612 limited to, terminating mediation, ordering the mortgagor or  
613 mortgagee to mediate in person, forbidding the mortgagee from  
614 charging the mortgagor for the mortgagee's attorney's fees, awarding  
615 attorney's fees, and imposing fines. In the case of egregious  
616 misconduct, the sanctions shall be heightened. The court shall not  
617 award attorney's fees to any mortgagee for time spent in any  
618 mediation session if the court finds that such mortgagee has failed to  
619 comply with this subdivision, unless the court finds reasonable cause  
620 for such failure.

621 (3) If the mediator reports to the court that the parties will not  
622 benefit from further mediation, the mediation period shall terminate  
623 automatically. If the mediator reports to the court after the first or  
624 second mediation session that the parties may benefit from further  
625 mediation, the mediation period shall continue.

626 (4) If the mediation period concludes and certain issues have not  
627 been resolved pursuant to the mediation, the mediator may refer the

628 mortgagor to any appropriate community-based services that are  
629 available in the judicial district, but any such referral shall not cause a  
630 delay in the mediation process.

631 (5) The Chief Court Administrator shall establish policies and  
632 procedures to implement this subsection. Such policies and procedures  
633 shall, at a minimum, provide that the mediator shall advise the  
634 mortgagor at the first meeting required by subdivision (4) of  
635 subsection (c) of section 49-31~~l~~, as amended by this act, that: (A) Such  
636 mediation does not suspend the mortgagor's obligation to respond to  
637 the foreclosure action beyond the limited time frame described in  
638 subdivision (6) of subsection (c) of section 49-31~~l~~, as amended by this  
639 act; and (B) a judgment of strict foreclosure or foreclosure by sale may  
640 cause the mortgagor to lose the residential real property or real  
641 property owned by a religious organization to foreclosure.

642 (6) In no event shall any determination issued by a mediator under  
643 this program form the basis of an appeal of any foreclosure judgment.

644 [(7) The foreclosure mediation program shall terminate when all  
645 mediation has concluded with respect to any foreclosure action with a  
646 return date during the period from July 1, 2009, to June 30, 2016,  
647 inclusive.]

648 [(8)] (7) At any time during the mediation period, the mediator may  
649 refer a mortgagor who is the owner-occupant of one-to-four family  
650 residential real property to the mortgage assistance programs, except  
651 that any such referral shall not prevent a mortgagee from proceeding  
652 to judgment when the conditions specified in subdivision (6) of  
653 subsection (c) of section 49-31~~l~~, as amended by this act, have been  
654 satisfied.

655 [(9)] (8) (A) The mediation period shall conclude following the third  
656 mediation session or if more than seven months have elapsed since the  
657 return date. Not later than fifteen days following the conclusion of the  
658 mediation period, and any subsequent extended mediation sessions  
659 held in accordance with this subdivision, any party may move for, or

660 the mediator may request, an extension of the mediation period. The  
661 court shall grant only one additional mediation session per motion or  
662 request upon a finding that it is highly probable the parties will reach  
663 an agreement through mediation. The court may also grant one  
664 additional mediation session per motion or request upon a finding that  
665 any party has engaged, either intentionally or by a pattern or practice,  
666 in conduct that is contrary to the objectives of the mediation program.  
667 The court shall make its ruling not later than twenty days after the  
668 filing of such motion or request, and no judgment of strict foreclosure  
669 or any judgment ordering a foreclosure sale shall be entered until (i)  
670 the court denies the motion or request, or (ii) the conclusion of the  
671 subsequent extended mediation session, except as provided in  
672 subparagraph (B) of this subdivision. Upon the grant of an additional  
673 mediation session following the proper finding, the court shall  
674 establish a reasonably expeditious deadline for such subsequent  
675 extended mediation session to occur. Such extended mediation period  
676 shall conclude following such subsequent extended mediation session.

677 (B) The mediation period may be extended for one additional  
678 mediation session without a hearing held pursuant to this subdivision  
679 provided all parties to the mediation agree that such parties would  
680 benefit from such a session and, in consultation with the mediator,  
681 establish a reasonably expeditious deadline for such session to take  
682 place.

683 (C) To determine whether to extend mediation, the court may  
684 consider all matters that have arisen in the mediation, including, but  
685 not limited to, the number of motions to extend mediation, the reasons  
686 for which an agreement has not been reached, the objectives of the  
687 mediation program, the extent to which the parties will benefit from  
688 further mediation, the reports submitted by the mediator, papers  
689 submitted in connection with any motion, and any supplemental  
690 reports submitted by a party. The court shall articulate its reasons in  
691 the order granting or denying any such motion or request to extend  
692 mediation.

693        [(10)] (9) For any case pending as of October 1, 2013, in which  
694 mediation is ongoing, (A) if three or fewer sessions have been held,  
695 such case shall be treated as if no sessions have been held as of said  
696 date for purposes of subdivision [(9)] (8) of this subsection, and (B) if  
697 four or more sessions have been held, then any party or the mediator  
698 may move to terminate the mediation period or extend such period in  
699 accordance with subdivision [(9)] (8) of this subsection and, if no such  
700 motion to extend is made, the mediation period shall conclude after  
701 the third mediation session occurring after October 1, 2013.

702        (d) (1) Not later than February 14, 2014, the Chief Court  
703 Administrator shall submit, in accordance with the provisions of  
704 section 11-4a, to the joint standing committee of the General Assembly  
705 having cognizance of matters relating to banks, a summary regarding  
706 the mediation program and a general summary of the data collected in  
707 the reports submitted pursuant to subdivision (2) of subsections (b)  
708 and (c) of this section from July 1, 2013, to December 31, 2013,  
709 inclusive. Such summaries shall include, but not be limited to, the  
710 aggregate data regarding the number of cases in mediation, the  
711 number of mediation sessions held, the number of agreements reached  
712 before the conclusion of the mediation period, the number of motions  
713 or requests for an extension or continuance and the identity of the  
714 party that made such a motion or request, whether the loan at issue  
715 was serviced by a third party, the judicial district in which the  
716 mediation took place and whether the mortgagor was self-represented.

717        (2) Not later than February 14, 2015, the Chief Court Administrator  
718 shall submit, in accordance with the provisions of section 11-4a, to the  
719 joint standing committee of the General Assembly having cognizance  
720 of matters relating to banks, a summary of the reports submitted from  
721 July 1, 2013, to December 31, 2014, inclusive, pursuant to subdivision  
722 (2) of subsections (b) and (c) of this section. The detailed data points for  
723 such summary, including data to be collected but not reported, shall be  
724 developed by the Chief Court Administrator in consultation with  
725 representatives from the Governor's office, the banking industry and  
726 consumer advocates.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	<i>from passage</i>	49-31l
Sec. 2	<i>from passage</i>	49-31n

**HSG**      *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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**OFA Fiscal Note****State Impact:**

Agency Affected	Fund-Effect	FY 16 \$	FY 17 \$
Judicial Dept.	BF - Potential Cost	None	\$6.7 million

**Municipal Impact:** None

**Explanation**

The bill results in a potential cost of \$6.7 million beginning in FY 17 to the Banking Fund by eliminating the statutory end date of the Foreclosure Mediation Program, currently scheduled for June 30, 2016. Included in the cost are the salaries and fringe benefits for 51 positions.

CGS Sec. 49-31v specifies that the program be provided within available appropriations until June 30, 2016. Therefore, it is unclear whether the Judicial Department is mandated to continue this program regardless of available funding. As such, the cost described above is potential.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.



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**OLR Bill Analysis****HB 6762*****AN ACT CONCERNING THE FORECLOSURE MEDIATION PROGRAM.*****SUMMARY:**

This bill makes the state's foreclosure mediation program permanent (see COMMENT). Under current law, the program would sunset on June 30, 2016.

EFFECTIVE DATE: Upon passage

**BACKGROUND*****Foreclosure Mediation Program***

This program is available to (1) owner-occupants of one- to four-family residential real property who use the property as their primary residence and (2) religious organizations. The property must be located in Connecticut, and the owner must be the borrower under a mortgage on the property.

The mediation program brings together Judicial Branch mediators, borrowers, and lenders. If an eligible borrower files an appearance and requests mediation, the lender must participate.

**COMMENT*****Missing Conforming Change***

While the bill removes several references to the sunset date, it does not amend a related statute which specifies that, until June 30, 2016, the program be available and funded within available appropriations (CGS § 49-31v).

**COMMITTEE ACTION**

## Housing Committee

Joint Favorable

Yea 13 Nay 0 (02/19/2015)